

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Shizuo Akira

Group Art Unit: 1632

Serial No.: 10/088,567

Examiner: Singh, Anoop Kumar

Filed: March 19, 2002

Confirmation No. 3078

For: Receptor Protein Specifically Recognizing Bacterial DNA

**REQUEST FOR CONSIDERATION OF A SUPPLEMENTAL IDS AFTER
ALLOWANCE**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants request consideration after allowance of the attached Information Disclosure Statement (Form SB08a) citing a single reference. The cited reference (Database EMBL Accession No. AB045181, XP002323803, December 13, 2000) was cited as a "P,X" reference in a Supplementary Partial European Search Report mailed April 28, 2005 for European Application EP 01 03 4545.

The Supplementary Partial ESR was referred to by Applicants' representative in the IDS submitted in this case on March 30, 2007. Specifically, the IDS of March 30, 2007 states:

Attached are copies of the references cited in the European Search Report dated April 28, 2005, and the documents cited therein in connection with the corresponding international application

(IDS, filed March 30, 2007). While the IDS of March 30, 2007 indicated that the references cited in the European Search Report were re-cited in that IDS, the currently cited reference was inadvertently omitted. The omission was found during final review of the application prior to payment of the issue fee. Therefore, Applicants submit the reference in order to correct the omission.

Substance of the Cited Reference

The cited reference (Database EMBL Accession No. AB045181, XP002323803, December 13, 2000) has an earliest date of December 13, 2000. The description in the cited reference states “Mus musculus TLR9 mRNA for toll-like receptor 9, complete cds” (see line 8 of reference). The reference includes an amino acid listing and a nucleotide listing.

Applicants note that the amino acid listing can also be found at Figure 1a in Hemmi et al (“A Toll-like receptor recognizes bacterial DNA”, Nature, vol. 408, pages 740-745, December 7, 2000). Applicants further note that the Hemmi reference has an earlier date than the cited reference (December 7, 2000 versus December 13, 2000), and that the cited reference refers to the Hemmi reference at line 31 of the cited reference.

Applicants note that the Hemmi reference was relied upon by the Examiner during prosecution to reject various claims, and that the rejection was overcome during prosecution by submission of a certified English translation of the priority document, which has a filing date of July 19, 2000. Specifically, in the Office Action of October 12, 2006, the Examiner stated

A certified English translation of the foreign priority document would remove the availability of the Hemmi reference under 102(a) if all the claimed subject matter were in fact disclosed in the foreign priority document

(Office Action, October 12, 2006, page 15). Following submission of the certified English translation of the foreign priority document on January 11, 2007, the Examiner stated that the rejection

is withdrawn in view of applicant's submission of certified English translation of the foreign priority document. It is noted that claimed subject matter were in fact disclosed in foreign priority document

(Office Action, April 3, 2007, page 18).

In summary, Applicants believe that the cited reference (Database EMBL Accession No. AB045181, XP002323803, December 13, 2000) is not prior art based on its date of December 13, 2000, which is after the priority date of July 19, 2000. Therefore, Applicants request consideration of the cited reference, and believe that consideration of the cited reference after allowance is consistent with the goal of advancing prosecution of the application.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this paper to Deposit Account No. **50-3732**, Order No. 14119.105010. In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. **50-3732**, Order No. 14119.105010.

Respectfully submitted,
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Dated: May 23, 2008
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